

UNITED STATES OF AMERICA
POSTAL REGULATORY COMMISSION
WASHINGTON, DC 20268-0001

Before Commissioners:

Ruth Y. Goldway, Chairman;
Nanci E. Langley, Vice Chairman;
Mark Acton; and
Robert G. Taub

Climax Post Office
Climax, New York

Docket No. A2011-83

ORDER AFFIRMING DETERMINATION

(Issued January 6, 2012)

I. INTRODUCTION

On December 15, 2011, the Postal Service advised the Commission that it “will delay the closing or consolidation of any Post Office until May 15, 2012”.¹ The Postal Service further indicated that it “will proceed with the discontinuance process for any Post Office in which a Final Determination was already posted as of December 12, 2011, including all pending appeals.” *Id.* It stated that the only “Post Offices” subject to closing prior to May 16, 2012, are those that were not in operation on, and for which a Final Determination was posted as of, December 12, 2011. *Id.* It affirmed that it “will not close or consolidate any other Post Office prior to May 16, 2012.” *Id.* at 2. Lastly,

¹ United States Postal Service Notice of Status of the Moratorium on Post Office Discontinuance Actions, December 15, 2011 (Notice).

the Postal Service requested the Commission “to continue adjudicating appeals as provided in the 120-day decisional schedule for each proceeding.” *Id.*

The Postal Service’s Notice outlines the parameters of its newly announced discontinuance policy. Pursuant to the Postal Service’s request, the Commission will fulfill its appellate responsibilities under 39 U.S.C. § 404(d)(5).

On September 22, 2011, Sue Keeler (Petitioner) filed a petition with the Commission seeking review of the Postal Service’s Final Determination to close the Climax, New York post office (Climax post office).² The Final Determination to close the Climax post office is affirmed.

II. PROCEDURAL HISTORY

On September 26, 2011, the Commission established Docket No. A2011-83 to consider the appeal, designated a Public Representative, and directed the Postal Service to file its Administrative Record and any responsive pleadings.³

On October 4, 2011, the Postal Service filed the Administrative Record with the Commission.⁴ The Postal Service also filed comments requesting that the Commission affirm its Final Determination.⁵

² Petition for Review received from Sue Keeler regarding the Climax, NY Post Office 12042, September 22, 2011 (Petition).

³ Order No. 873, Notice and Order Accepting Appeal and Establishing Procedural Schedule, September 26, 2011.

⁴ The Administrative Record is attached to the United States Postal Service Notice of Filing, October 4, 2011 (Administrative Record). The Administrative Record includes, as Item No. 47, the Final Determination to Close the Climax, NY Post Office and Extend Service by Highway Contract Route Service (Final Determination).

⁵ United States Postal Service Comments Regarding Appeal, November 9, 2011 (Postal Service Comments).

Petitioner filed a Participant Statement supporting her Petition.⁶ On November 1, 2011, Petitioner filed a Supplemental Participant Statement, which included a letter from customer Robert Welch, Sr.⁷

The Public Representative did not file a reply brief.

III. BACKGROUND

The Climax post office provides retail postal services and service to 95 post office box or general delivery customers. Final Determination at 2. The post office also serves 170 general delivery customers. The Climax post office, an EAS-13 level facility, has retail access hours of 8:00 a.m. to 1:00 p.m. and 2:00 p.m. to 4:30 p.m., Monday through Friday, and 8:00 a.m. to 11:30 a.m. on Saturday. Lobby access hours are from 8:00 a.m. to 5:00 p.m., Monday through Friday, and 8:00 a.m. to 11:30 a.m. on Saturday. *Id.*

The postmaster position became vacant on March 13, 2010, when the Climax postmaster was promoted. An officer-in-charge (OIC) was installed to operate the post office. Retail transactions average 63 transactions daily (77 minutes of retail workload). Post office receipts for the last 3 years were \$76,955 in FY 2008; \$72,781 in FY 2009; and \$71,673 in FY 2010. There are no permit or postage meter customers. *Id.* By closing this post office, the Postal Service anticipates savings of \$41,383 annually. *Id.* at 7.

After the closure, retail services will be provided by the Earlton post office located approximately 3 miles away.⁸ Delivery service will be provided by highway contract route (HCR) service through the Earlton post office. *Id.* at 2. The Earlton post office is an EAS-15 level office, with retail hours of 8:15 a.m. to 12:00 p.m. and 1:30 p.m.

⁶ Participant Statement received from Sue Keeler, October 28, 2011 (Participant Statement).

⁷ Supplemental Participant Statement, November 1, 2011 (Supplemental Participant Statement). This included a letter from postal customer Robert Welch, Sr. (Welch Letter).

⁸ *Id.* at 2. MapQuest estimates the driving distance between the Climax and Earlton post offices to be approximately 2.9 miles (3 minutes driving time).

to 4:30 p.m., Monday through Friday, and 9:00 a.m. to 11:00 a.m. on Saturday. *Id.* There are 90 post office boxes available. The Postal Service will continue to use the Climax name and ZIP Code. *Id.* at 7, Concern No. 1. However, once the Final Determination is implemented, customers who elect to close their post office boxes and begin street delivery will be required to change their addresses. Postal Service Comments at 12; Final Determination at 3, Concern 10.

IV. PARTICIPANT PLEADINGS

Petitioner. Petitioner opposes the closure of the Climax post office. She argues that closing the Climax post office will require customers to travel several miles out of their way on Route 81 to the Earleton post office to obtain postal services. Participant Statement at 1. Petitioner is also concerned about the OIC losing her job. Petition at 1. The Petitioner further raises procedural concerns: she states that the community meeting was held at the Earleton post office rather than the Climax post office, customers did not receive enough advance notice of the meeting, and the meeting time (5:00 p.m. in the evening on a weekday) was inconvenient. Participant Statement at 1. Finally, Petitioner describes a disagreement with the Administrative Discontinuance Coordinator (ADC) over her right to post a petition to “Save the Climax Post Office!” at the Climax post office. The ADC told her that this was prohibited by postal regulations. Petition at 1; Postal Service Comments at 5.

Mr. Welch is concerned about the impact the closure would have on the Climax community. Supplemental Participant Statement at 1.

Postal Service. The Postal Service argues that the Commission should affirm its determination to close the Climax post office. Postal Service Comments at 2. The Postal Service believes the appeal raises five main issues: (1) the effect on postal services; (2) the impact on the Climax community; (3) the economic savings expected to result from discontinuing the Climax post office; (4) the effect of the closing on the OIC who has been operating the Climax post office; and (5) procedural issues. *Id.* at 1. The Postal Service asserts that it has given these and other statutory issues serious

consideration and concludes that the determination to discontinue the Climax post office should be affirmed. *Id.* at 2.

The Postal Service explains that its decision to close the Climax post office was based on several factors, including:

- the postmaster vacancy;
- a minimal workload and low post office revenue;
- a variety of other delivery and retail options (including the convenience of rural delivery and retail service);
- no projected population, residential, commercial, or business growth in the area minimal impact on the community; and
- expected financial savings.

Id. at 5. The Postal Service contends that it will continue to provide regular and effective postal services to the Climax community when the Final Determination is implemented. *Id.* at 5-6.

The Postal Service also asserts that it has followed all statutorily required procedures and has addressed the concerns raised by Petitioner and Mr. Welch regarding the effect on postal services, effect on the Climax community, economic savings, effect on postal employees and procedural issues raised by Petitioner. *Id.* at 6-18.

V. COMMISSION ANALYSIS

The Commission's authority to review post office closings is provided by 39 U.S.C. § 404(d)(5). That section requires the Commission to review the Postal Service's determination to close or consolidate a post office on the basis of the record that was before the Postal Service. The Commission is empowered by section 404(d)(5) to set aside any determination, findings, and conclusions that it finds to be (a) arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with the

law; (b) without observance of procedure required by law; or (c) unsupported by substantial evidence in the record. Should the Commission set aside any such determination, findings, or conclusions, it may remand the entire matter to the Postal Service for further consideration. Section 404(d)(5) does not, however, authorize the Commission to modify the Postal Service's determination by substituting its judgment for that of the Postal Service.

A. Notice to Customers

Section 404(d)(1) requires that, prior to making a determination to close any post office, the Postal Service must provide notice of its intent to close. Notice must be given 60 days before the proposed closure date to ensure that patrons have an opportunity to present their views regarding the closing. The Postal Service may not take any action to close a post office until 60 days after its determination is made available to persons served by that post office. 39 U.S.C. § 404(d)(4). A decision to close a post office may be appealed within 30 days after the determination is made available to persons served by the post office. 39 U.S.C. § 404(d)(5).

The record indicates the Postal Service took the following steps in reaching its Final Determination. On April 28, 2011, the Postal Service distributed questionnaires to customers regarding the possible change in service at the Climax post office. Final Determination at 2. A total of 263 questionnaires were distributed and 97 were returned. On May 16, 2011, the Postal Service held a community meeting at the Earleton post office to answer questions and to address customer concerns. Eighteen customers attended. *Id.*

The Postal Service posted the proposal to close the Climax post office with an invitation for comments at the Climax and Earleton post offices from June 2, 2011 through August 3, 2011. The Final Determination was posted at the same 2 post offices from August 25, 2011 through September 26, 2011. Postal Service Comments at 5.

The Postal Service has satisfied the notice requirements of 39 U.S.C. § 404(d).

B. Other Statutory Considerations

In making a determination on whether or not to close a post office, the Postal Service must consider the following factors: the effect on the community; the effect on postal employees; whether a maximum degree of effective and regular postal service will be provided; and the economic savings to the Postal Service. 39 U.S.C. § 404(d)(2)(A).

Effect on the community. Climax, New York is an unincorporated community located in Greene County, New York. Final Determination at 6. The community is administered politically by the town of Coxsackie. Police protection is provided by the Coxsackie Police Department. Fire protection is provided by the Earlton Fire Department. The community is comprised of retirees, commuters who work in nearby communities, self-employed residents, and those who work in local Climax businesses. Residents may travel to nearby communities for other supplies and services. *Id.*

As a general matter, the Postal Service solicits input from the community by distributing questionnaires to customers and holding a community meeting. The Postal Service met with members of the Climax community and solicited input from the community with questionnaires. In response to the Postal Service's proposal to close the Climax post office, customers raised concerns regarding the effect of the closure on the community. Their concerns and the Postal Service's responses are summarized in the Final Determination. *Id.*

Petitioner and Mr. Welch both raise the issue of the effect of closing the post office on the Climax community. Petition at 1; Participant Statement at 1; Supplemental Participant Statement at 1. Petitioner submitted two "Save the Climax Post Office!" petitions, which together listed 303 signatures of customers who opposed closing the post office. Mr. Welch notes that "A rural post office such as this one makes you feel like your [sic] a part of a community...." Supplemental Participant Statement at 1. The Postal Service contends that it considered this issue and explains that the Climax community identity will be preserved by continuing the use of the Climax name and ZIP codes. Postal Service Comments at 11-12.

The Postal Service has adequately considered the effect of the post office closing on the community as required by 39 U.S.C. § 404(d)(2)(A)(i).

Effect on employees. The Postal Service states that the Climax postmaster was promoted on March 13, 2010 and that an OIC has operated the Climax post office since then. *Id.* at 15; Final Determination at 7. It asserts that after the Final Determination is implemented, the temporary OIC will either be reassigned or separated and that no other Postal Service employee will be adversely affected. *Id.*

The Postal Service has considered the possible effects of the post office closing on the OIC and has satisfied its obligation to consider the effect of the closing on employees at the Climax post office as required by 39 U.S.C. § 404(d)(2)(A)(ii).

Effective and regular service. The Postal Service contends that it has considered the effect the closing will have on postal services provided to Climax customers. Postal Service Comments at 6-10. It asserts that customers of the closed Climax post office may obtain retail services at the Earlton post office located 3 miles away. Final Determination at 2. Delivery service will be provided by highway contract route service carrier through the Earlton post office. *Id.* The 95 Climax post office box and general delivery customers may obtain Post Office Box service at the Earlton post office, which has 90 boxes available. *Id.*

For customers choosing not to travel to the Earlton post office, the Postal Service explains that retail services will be available from the highway contract service route carrier. *Id.* at 5. The Postal Service adds that it is not necessary to meet the carrier for service since most transactions do not require meeting the carrier at the mailbox. *Id.*

Petitioner and Mr. Welch argue that service through the Earlton post office will not provide the maximum degree of effective postal services because customers will have to travel several miles out of their way to Earlton to conduct postal transactions. *See generally* Petition; Participant Statement; Welch Letter. They also argue that Earlton does not offer the opportunity to handle non-postal business such as shopping, gas, or banking, all of which are available in either Climax or nearby Cocksackie. *Id.*

The Postal Service responds that it considered Petitioner's concerns and states that with the exception of post office box customers and those customers who may need to recover a package at the post office, the selection of Earlton as the replacement post office will not have a large impact. Postal Service Comments at 7. In most instances, customers need not travel to the Earlton post office if they do not wish to. The Postal Service explains that the contract carriers can perform many services during the regular delivery of mail, which averts the need to go to any post office, Earlton or otherwise. *Id.*

The Postal Service has considered and responded to the issues raised by customers concerning effective and regular service as required by 39 U.S.C. § 404(d)(2)(A)(iii).

Economic savings. The Postal Service estimates total annual savings of \$41,383. Final Determination at 7. It derives this figure by summing the following costs: postmaster salary and benefits (\$48,569) and annual lease costs (\$6,930), minus the cost of replacement service (\$14,116). *Id.*

The Commission has previously stated that the Postal Service should not compute savings based on compensation costs unless there is a reasonable assurance that closing will actually eliminate those costs. The Climax post office postmaster was promoted on March 13, 2010. *Id.* The post office has since been staffed by a non-career OIC who, upon discontinuance of the post office, may be separated from the Postal Service. The postmaster position and the corresponding salary will be eliminated. See, e.g., Docket No. A2011-67 United States Postal Service Comments Regarding Appeal, October 24, 2011, at 13; Docket No. A2011-68, United States Postal Service Comments Regarding Appeal, November 2, 2011, at 10. Furthermore, notwithstanding that the Climax post office has been staffed by an OIC for almost 2 years, even assuming the use of the presumably lower OIC salary, the Postal Service would have satisfied the requirements of section 404(d)(2)(A)(iv).

Mr. Welch offered an alternative proposal for savings through his suggestion that the Postal Service discontinue Saturday delivery in lieu of closing rural post offices.

Supplemental Participant Statement at 1. The Postal Service responds that it has considered changes to Saturday delivery; however it is still obliged to maintain postal facilities in conformity with reasonable economies of operation. Postal Service Comments at 14.

The Postal Service has satisfied the requirement that it consider economic savings as required by 39 U.S.C. § 404(d)(2)(A)(iv).

VI. CONCLUSION

Based on the review of the record, the Commission concludes that the Postal Service has adequately considered all requirements of 39 U.S.C. § 404(d). Accordingly, the Postal Service's determination to close the Climax post office is affirmed.

It is ordered:

The Postal Service's determination to close the Climax, New York post office is affirmed.

By the Commission.

Shoshana M. Grove
Secretary

DISSENTING OPINION OF CHAIRMAN GOLDWAY

I dissent in this case.

The Administrative Record is inaccurate with regard to economic savings. As such, the Postal Service has not adequately considered economic savings as required by 39 U.S.C. § 404(d)(2)(A)(iv). The Postal Service argues that savings should be calculated based on a fulltime postmaster's salary. Yet the Climax post office has been operated by an Postmaster Replacement (PMR) since March 2010. On the one hand, the Postal Service argues that the effect on employees of this closing will be minimal; yet on the other hand, it argues that the savings should be calculated using a fulltime position. There are inherent and blatant contradictions in the record that must be corrected on remand.

It is not the statutory responsibility of the Postal Regulatory Commission to correct the record for the Postal Service and certainly not to make its own surmise about what and/or whether there would be savings if accurate data was in the record. Therefore, the decision to close should be remanded to the Postal Service to correct the record and present a more considered evaluation of potential savings.

I am also concerned about the apparent discrepancy between the number of people who signed the petition (300), and the number that responded to the questionnaire (97), and the number of people who showed up to the community meeting (18). The dramatic drop-off in participation raises questions about the adequacy of notice for the community meeting.

I wish to note, as does Vice Chairman Langley, that the record shows fewer post office boxes in the receiving facility than in the one being closed. The Climax post office has 95 post office boxes. By contrast, the replacement post office in Earlton has only 90 post office boxes available. *Id.* There is no explanation of the effect on customers of

this shortfall. Without a more complete explanation of how the closing of the Climax post office will affect post office box customers, the Postal Service has not satisfied its obligation to consider whether the replacement service it proposes is effective and regular service, as required by 39 U.S.C. § 404(d)(2)(a)(iii).

Additionally, there is some ambiguity in the record over which members of the community will be able to retain the use of the Climax, New York name and ZIP Code in their address. The ability to retain the community name and ZIP Code in the address is a well established and important factor in retaining a community's identity. The Postal Service has not provided clear and unambiguous information to the community regarding which customers can retain this important community designation when facility closures occur, and therefore has not carefully considered the impact on the community.

Moreover, the Postal Service recently announced a moratorium on post office closings. It is confusing and perhaps unfair to require some citizens whose post offices have received a discontinuance notice as of December 12, 2011 to gather evidence and pursue an appeal to the Commission, while others whose post offices were in the review process, but had not yet received a discontinuance notice by December 12, 2011, have the respite of a 5-month moratorium.

The citizens of Climax and their concerns regarding the loss of a neighborhood post office should be afforded the same opportunity to be heard and considered as the citizens of the approximately 3,700 post offices fully covered by the moratorium.

Ruth Y. Goldway

DISSENTING OPINION OF VICE CHAIRMAN LANGLEY

The Postal Service did not adequately consider all requirements of 39 U.S.C. § 404(d).

The Postal Service did not adequately consider the economic savings as required by 39 U.S.C. § 404(d)(2)(A)(iv). The Postal Service should take into consideration that since March 2010, a non-career postmaster relief (PMR) has been in charge of this facility, not an EAS-13 postmaster. The PMR's salary and benefits should be reflected in its cost savings analysis.

In addition, I do not believe the Postal Service adequately complied with 39 U.S.C. § 404(d)(2)(A)(iii) which requires that it provide a maximum degree of effective and regular postal services to rural communities and small towns. The Postal Service indicates that the Climax post office has 95 post office box holders and that the proposed Administrative Office, Earlton post office, has 90 post office boxes available. Final Determination at 2. Should all current post office box holders opt for a post office box, it appears that the Earlton post office does not have enough available post office boxes to accommodate the Climax post office box holders.

As a government entity, the Postal Service should ensure that its cost/benefit analysis accurately identifies capturable cost savings and does not overstate savings.

I find that the Postal Service's decision to discontinue operations at the Climax post office is unsupported by evidence on the record and, thus, should be remanded.

Nanci E. Langley